

Message Text

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NEA/INS:RMORLEY

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FM SECSTATE WASHDC

TO AMEMBASSY NEW DELHI PRIORITY

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E.O. 11652: N/A

TAGS: EINV, ETRD, IN

SUBJECT: US-GOI ECONOMIC/COMMERCIAL SUBCOMMISSION -
INDIANELIGIBILITY FOR GENERALIZED PREFERENCES (GSP) UNDER
SEC. 502 (B) (4) OF THE TRADE ACT OF 1974

REF: (A) STATE 282968; (B) STATE 282967; (C) STATE 263514;
(D) NEW DELHI 7401, DATED JUNE 5, 1974

1. AS REPORTED REF A, SEC. 502 (B) (4) OF TITLE V OF THE
TRADE ACT OF 1974 PROHIBITS THE PRESIDENT FROM DESIGNATING
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AS ELIGIBLE FOR GSP ANY COUNTRY WHICH HAS NATIONALIZED THE

PROPERTY OF U.S. CITIZENS (OR TAKEN OTHER ACTIONS WITH SIMILAR EFFECT), UNLESS HE DETERMINES THAT FAIR COMPENSATION IS BEING PAID, THAT SUCH COUNTRY IS "OTHERWISE TAKING STEPS TO DISCHARGE ITS OBLIGATIONS UNDER INTERNATIONAL LAW," OR THAT THE PARTIES HAVE SUBMITTED THE DISPUTE TO ARBITRATION. UNLIKE THE HICKENLOOPER AMENDMENT (SEC. 620 (E)) TO THE FOREIGN ASSISTANCE ACT, A COPY OF THIS DETERMINATION MUST BE FURNISHED TO BOTH HOUSES OF CONGRESS. THIS NEW REQUIREMENT REINFORCES THE NEED FOR THE USG TO MONITOR AND TO ASSIST IN RESOLVING OUTSTANDING INVESTMENT DISPUTES, AND IT REQUIRES A JUDGMENT TO BE MADE REGARDING THE APPLICATION OF SEC. 502 (B) (4) TO PARTICULAR COUNTRIES.

2. NOTWITHSTANDING INELIGIBILITY UNDER SEC. 502 (B) (4).

THE PRESIDENT MAY DESIGNATE COUNTRIES AS ELIGIBLE FOR GSP (ASSUMING THEY ARE ELIGIBLE UNDER OTHER PROVISIONS OF SECTION 502 NOT COVERED BY THE WAIVER) IF HE DETERMINES IT TO BE IN THE "NATIONAL ECONOMIC INTEREST OF THE UNITED STATES" TO DO SO, AND REPORTS HIS DETERMINATION, WITH SUPPORTING REASONS, TO CONGRESS. AS INDICATED PARA 4 REF B, IN ORDER TO AVOID MAKING DETERMINATIONS OF ELIGIBILITY AT THIS TIME, WE PRESENTLY PLAN TO INVOKE THE "NATIONAL ECONOMIC INTEREST" WAIVER TO ALLOW THE INTERNATIONAL TRADE COMMISSION TO CONDUCT ITS PRODUCT EVALUATION BASED UPON THE LARGEST POSSIBLE NUMBER OF POTENTIAL BENEFICIARIES. UPON COMPLETION OF THE COMMISSION'S REVIEW (WHICH MUST BE FINISHED WITHIN SIX MONTHS AFTER IT RECEIVES THE PRODUCT LIST), THE USG MUST MAKE DETERMINATIONS OF COUNTRY ELIGIBILITY BEFORE GSP CAN BE IMPLEMENTED.

3. IN ORDER TO DEVELOP THE INFORMATION NEEDED FOR A DETERMINATION, AS WELL AS TO PREPARE FOR THE MEETINGS OF THE US-GOI ECONOMIC/COMMERCIAL SUBCOMMISSION TO BE HELD IN WASHINGTON LATER THIS MONTH (REF C), REQUEST EMBASSY TO INFORM DEPARTMENT BY COB JANUARY 13 OF THE STATUS OF ALL OUTSTANDING DISPUTES OF WHICH EMBASSY IS PRESENTLY AWARE BETWEEN U.S. INVESTORS (OR OTHER PROPERTY OWNERS) AND THE GOI WHICH, IN EMBASSY'S VIEW, MIGHT AFFECT INDIA'S ELIGIBILITY UNDER SEC. 502 (B) (4). COMMENTS SHOULD LIMITED OFFICIAL USE

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ENCOMPASS, BUT NOT NECESSARILY BE LIMITED TO: A) THE SIX U.S. INSURANCE COMPANIES NATIONALIZED IN EARLY 1973 (AMERICAN, GREAT AMERICAN, HANOVER, HARTFORD FIRE, HOME AND NEW HAMPSHIRE); B) MCNALLY-BIRD ENGINEERING CO., WHOSE PARENT (MCNALLY-PITTSBURGH MANUFACTURING CORP.) WAS ORDERED BY THE GOI CONTROLLER OF CAPITAL ISSUES TO REDUCE ITS EQUITY INTEREST FROM 63 PERCENT TO 38 PERCENT IN 1971; AND C) THE DISPUTE INVOLVING IDI MANAGEMENT, INC. (FORMERLY

THE GIRDLER CORP.) REPORTED REF D. CITATION TO PRIOR REPORTING WILL SUFFICE IF NO SIGNIFICANT DEVELOPMENTS HAVE OCCURRED IN THE INTERIM.

4. THE STARTING POINT FOR EVALUATION SHOULD BE THE TEXT OF THE LEGISLATION ITSELF. UNTIL DEFINITIVE LEGAL ANALYSIS IS COMPLETED, EMBASSY SHOULD ASSUME THAT THE PROVISION APPLIES TO ALL PROPERTY (BOTH COMMERCIAL AND NON-COMMERCIAL) OF U.S. CITIZENS (INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS 50 PERCENT OR MORE BENEFICIALLY OWNED BY U.S. CITIZENS) WITHOUT REGARD TO VALUE, USE OR TIME OF TAKING. JUDGMENT MUST BE EXERCISED IN DETERMINING WHETHER A "NATIONALIZATION" HAS OCCURRED WITHIN THE MEANING OF 502 (B) (4) (A) - (C). SOME ACTIONS

(SUCH AS COERCED PARTICIPATION, SEVERE CURTAILMENT OF MANAGEMENT PREROGATIVES, AND FORCED CANCELLATION OR RENEGOTIATION OF CONTRACT RIGHTS) MAY BE EXPROPRIATORY IN EFFECT WHILE STOPPING SHORT OF OUTRIGHT TAKEOVER. JUDGMENTS MUST ALSO BE MADE IN EVALUATING WHETHER THE REQUIREMENTS OF 502 (B) (4) (D) ARE BEING MET.

5. WOULD ALSO APPRECIATE EMBASSY COMMENTS REGARDING WHAT STEPS USG MIGHT APPROPRIATELY TAKE TO BRING SEC. 502 (B) (4) TO THE ATTENTION OF GOI OFFICIALS, AND TO ENCOURAGE SETTLEMENT OF OUTSTANDING DISPUTES BEFORE THE INTERNATIONAL TRADE COMMISSION COMPLETES ITS INVESTIGATION. KISSINGER

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